

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 139 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDULHAKIM ABDULGANI PATHAN

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR DN PATEL, APP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 07/07/97

ORAL JUDGEMENT

1. The petitioner, an exterrne under the impugned order dated 18/9/1996 (Annexure : B) passed by Respondent No.2, has preferred this petition challenging the said order as well as the Appellate order dated 20/1/1997 (Annexure : D) passed by respondent No.1 on number of grounds, inter alia, on the ground appearing in Ground (h) of the petition. The said ground would read

as under :

"The petitioner respectfully states that there is a great delay in exercising the powers under the Bombay Police Act. That the last offence alleged to have been registered against the petitioner is C.R. No. 115/95 on 7/5/95 whereas the show cause notice was issued on 16/4/96. Thus, there is a delay of about one year in exercising the powers under the Act for exterting the petitioner. That the extertment proceedings is to be initiated against an externee for preventive measure and not to punish him. Therefore, the authority must have to consider the proximity and the livelink between the allegations made against an externee and the action proposed to be taken against the externee. If there is a long delay between the same the authority must consider the period of delay before exercising the powers of extertment and after satisfying itself that the period of delay is not so unreasonable for exercising the powers, the authority can initiate proceedings. In the present case the exterting authority has failed to consider the aspect of delay and, therefore, the subjective satisfaction is vitiated. Therefore, the impugned orders are required to be quashed and set aside."

2. Rule was made returnable on 20/2/1997. The matter has come up for hearing today. No Affidavit in Reply has been filed by the respondents. In order to substantiate the aforesaid ground which contains within it the facts with regard to delay, it has been submitted on behalf of the petitioner that in fact the show cause notice was issued on 16/4/1996 and the proceedings were held before the Externed Authority. Such proceeding lasted upto 18/9/1996 when the impugned order of extertment was passed. Thus there is unreasonable passage of time in concluding the extertment proceedings. In order to canvass the point of delay Mr. H.R. Prajapati, learned Advocate for the petitioner has placed reliance upon a decision of this Court dated 10/12/1996 in the case between Sitaben M. Thakore V/s. Commissioner of Police in Special Criminal Application No. 63 of 1996 (Coram : N.N.Mathur, J.). The submission before the Court in that case was that the order of extertment was passed after a long lapse of time which snapped the live link in between the past acts committed by the concerned petitioner and the order

of exterrnment impugned by him.

3. In the present case it has been submitted on behalf of the respondents that the delay has occasioned not on account of the fault of the concerned authority, but on account of either fault of the complainant or on account of the fault of the exterrnee. In my opinion, this is no explanation of delay. The idea behind the concept of exterrnment as envisaged by section 56 of the Bombay Police Act is to send out a man who is engaged in anti-social activities in a particular area and to relieve the people of the area from the person of his illegal activities, by destroying the established net-work of the evil elements of a particular locality. On a reference to the aforesaid decision rendered by this Court it can be seen that there also similar submissions were made for explaining the delay, although by Affidavit. This Court considered the provisions of Section 56 and onwards of the Bombay Police Act and observed as under :

8. Section 56 of the Bombay Police Act

empowers the authority empowered by the State Government to pass an order for removal of a person on the satisfaction that :- (a) the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regard the safety of their person or the property, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant.

9. On the reading of the aforesaid provisions, it is clear that, on reasonable grounds for believing that the person is engaged or about to be engaged in the commission of offence and further the witnesses are not willing to come forward is the important consideration for the purpose of passing an order under Section 56. The words in the section 'is engaged or is about to be engaged' refer to the present

activity and continued one. It does not refer to a matter of past, meaning thereby that on finding that the activity of the person, the action arose as to what is the immediate near. The question may again arise as to what is the immediate near. If a person is directed or is required to be prevented from committing acts of violence which he alleged to be repeatedly doing so, then the 'immediate near' would mean, 'within reasonable time.' Such reasonable time cannot be the long period of six months or one year.

10. In an unreported Judgment of Division Bench of this Court (Coram : K.J.Vaidhya and S.D.Dave, JJ) being Special Civil Application No.1295/94 decided on 24.01.1995, 'reasonable period' has been indicated as of 'six months'. In the said case, the externee was found to be guilty for delay in extermnt proceedings, but still the Court observed as follows :

"The idea behind the concept appears to be a two fold one : firstly, send out a man who is engaged in antisocial activities in a particular area, and secondly: save the area and the people residing therein from a person and his illegal activities. The whole idea is to destroy an established net work which an under world element has been able to create in a particular locality. This very idea revolving around the above said provisions of Bombay Police Act, 1951, makes it obligatory that the whole exercise must be done as expeditiously as possible and within a reasonable time frame."

Thus, whosoever may be the responsible whether the externee or the authority for delay of the proceedings, the very purpose of the exercise of powers under section 58 is frustrated if the same are not exercised within a 'reasonable period', because the grounds which existed for extermnt which required an immediate action, cannot be said to have continued for a long period."

4. As in the case of Sitaben (Supra), here also it has been submitted that if sufficient opportunity was not made available to the petitioner it would be submitted

that principles of natural justice have been violated. This Court in the aforesaid decision observed that rule of natural justice could not be unnaturally expanded and that the proceeding of exterrnent being of a summary nature requires to be regulated with care and caution by the concerned Authorities. Reference was made by this Court in that decision to a decision of the Apex Court in Swadeshi Cotton Mill V/s. Union of India, reported in AIR 1981 SC 818, inter-alia holding that -

"The audi alteram partem rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure) this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case."

5. This Court has also made a reference to another decision of the Apex Court in the case of Board of Mining Examination V/s. Ramjee, reported in AIR 1977 SC 965. Referring to the observation of the Apex Court that natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all, it has beeen stated that unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating.

6. Dealing with the facts so as to explain the delay this Court held that the inquiry under Section 59 of the Act being of urgent nature only a short notice of 3 to 7 days may be given for submitting the written statement, and after immediately fixing the date for examination of witnesses and continuously completing the evidence the matter might be disposed of in that manner. Following observations deserve a note to be made here also for the authorities to bear the same in mind in future cases :

"Though in the Division Bench Judgment, it is expressed that the enquiry should be completed within a period of six months, it only provides an outer limit in extreme cases. No definite period of inquiry can be provided, it depends upon the facts of each case. If there is a long delay in passing the orders of exterrnent after

the issuance of show cause notice, the extermment authority cannot reasonably come to conclusion that the movement or the acts of the externeee are causing or calculated to cause alarm, danger or harm to person or property, so as to prevent him to moving himself from certain areas."

7. In my opinion the aforesaid decision of this Court would squarely apply to the facts of the present case and it will not be necessary to go to other grounds of challenge to the impugned order of extermment and the Appellate order. The conclusion is that the extermning authority can reasonably be said to have failed to regulate the proceeding in true spirit of the provisions of Section 59 of the Act as has been observed in the aforesaid case. The same conclusion would follow.

8. In view of what is stated above, this Special Criminal Application is allowed. The impugned order of extermment dated 18/9/1996 and the order of confirmation passed in Appeal by the Appellate Authority on 10/1/1997 are hereby quashed and set aside. Rule made absolute accordingly.

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